

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

JOSE ESCALERA,

Defendant.

DECISION AND ORDER

09-M-01064(M)

Before me is defendant's motion for reconsideration of the order of detention [4].

Oral argument was held before me on October 15, 2009 [7]. For the following reasons, defendant's motion is DENIED.

Defendant is charged with, *inter alia*, possessing a controlled substance with intent to distribute in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(C). Following a detention hearing conducted on August 17, 2009, I detained the defendant, finding that he had failed to rebut the presumption under 18 U.S.C. § 3142(e) that no condition or combination of conditions will reasonably assure his appearance as required. Detention Order dated August 24, 2009 [3].

Among the information proffered at the detention hearing was that FBI Agent Yarvelli had recently informed the prosecutor that defendant may have been associated with the homicide of one Estaban Torres. Based on the nebulous nature of the government's proffer concerning defendant's possible involvement in Mr. Torres' homicide, I advised defendant at that time that he could move for reconsideration should more information regarding this incident become available.

Defendant now moves for reconsideration, arguing that several months have elapsed with no clarification from the government of defendant's alleged involvement in Mr.

Torres' homicide. After hearing from the parties at the October 15, 2009 proceeding, it appears that the investigation into Mr. Torres' homicide is ongoing, and the possibility of defendant's involvement has not been completely eliminated. Moreover, this was but one of several factors - including defendant's lack of work history, extensive criminal history and heavy drug use - that led to my initial decision to detain him. On balance, I still conclude that defendant has not rebutted the presumption in favor of detention.

Therefore, defendant's motion for reconsideration is denied, without prejudice to renewal based upon changed circumstances.

Dated: October 20, 2009

/s/ Jeremiah J. McCarthy
JEREMIAH J. MCCARTHY
United States Magistrate Judge